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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

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DEC 13 2004

In re Application of
Michael Kapolka et al.
Application No. 10/823,804
Filed: April 12, 2004
Attorney Docket No. 03-089-01

OFFICE OF PETITIONS

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a)

This is in response to the petition filed November 26, 2004 under 37 CFR 1.47(a).

The petition is **GRANTED**.

The above-identified application was filed on April 12, 2004, naming Michael Kapolka, Sam Chang, Andrew Smith, Brian Crull, Dennis Essenmacher, Andrew Ditchfield, William Bromley, Brian Carl, Gregory A. Dils, Hassanayn Machlab El-Hajj, Gregory J. Kelsey, Mark Brown, and Nik Neymeyer as joint inventors but without a signed declaration. Accordingly, on June 25, 2004, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on November 26, 2004, an oath or declaration executed by joint inventors Smith, Essenmacher, Bromley, Dils and El-Hajj, Kelsey, Brown and Neymeyer, a three month extension of time and the instant petition under 37 CFR 1.47(a) was filed. The petition argues that joint inventors Kapolka, Chang, Crull, Ditchfield and Carl refuse to sign the oath or declaration and thus by their actions, to cooperate with the filing of the instant application.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition bears proof that while the application papers were sent to joint inventors Kapolka, Chang, Crull, Ditchfield and Carl, that neither has returned an executed oath or declaration. Further, the petitioners have shown that non-signing inventors Kapolka, Chang and Ditchfield have indicated on previous occasions that they would not execute

any paperwork for their previous employer, the assignee. Non-signing inventors Crull and Carl, while they have received the application papers and the request to execute the oath or declaration, have simply not returned such. Petitioners have even shown that follow-up attempts to communicate with the non-signing inventors to have them execute the oath or declaration have been unsuccessful.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). In view thereof, this application is hereby accorded Rule 1.47(a) status.

Thus, as provided in Rule 1.47c, this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Please be advised that effective November 22, 2004 the fee for a petition under 37 CFR 1.47 and pursuant to 37 CFR 1.17(g) has been set at \$200 instead of the fee previously set at \$130.00. Deposit account no. 13-2490 has been charged in the amount of \$200.00.

The application is being forwarded to Technology Center 3683 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions